



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0215]

Hours of Service of Drivers: Right-A-Way LLC.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application.

SUMMARY: FMCSA announces its decision to deny an application from Right-A-Way, LLC (Right-A-Way) requesting an exemption from the requirement that its short-haul drivers use electronic logging devices (ELDs) when they are required to prepare records of duty status (RODS) more than eight days in a 30 consecutive day period. FMCSA has analyzed the exemption application and has determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA therefore denies Right-A-Way's application for exemption.

FOR FURTHER INFORMATION CONTACT: Ms. La Tonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-9220 MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, 49 CFR 395.1(e) provides exceptions from the requirement to prepare records of duty status (RODS) for drivers operating in short-haul operations, provided certain conditions are satisfied. Section 395.8(a)(1)(iii)(A)(1) allows motor carriers to require drivers to record drivers' duty status manually rather than use an ELD, if the

drivers are operating commercial motor vehicles “in a manner requiring completion of a record of duty status not more than 8 days within any 30-day period.” Drivers operating in short-haul operations are not required to prepare RODS, except for the days when they do not satisfy all the criteria provided in 49 CFR 395.1(e). These drivers may prepare paper RODS for those occasions as long as RODS are not required more than 8 days in a 30-day period. For operations where the short-haul drivers fail to satisfy the applicable criteria more than eight days in a 30-day period, the carrier and its drivers would be required to use ELDs.

II. Request for Exemption

Right-A-Way explained that it is a pipeline contract service company who sub-contracts to maintain the pipeline’s right-of-way corridor above ground. Right-A-Way’s operation covers refined products, crude oil and natural gas covering 2,500 miles of pipeline in the states of Texas, Oklahoma, Kansas, Missouri, Arkansas and Colorado, with anticipated expansion to Minnesota, Iowa, North Dakota, South Dakota, Nebraska and Wyoming. In addition, Right-A-Way maintains 1,100 miles of ammonia pipeline that services the agricultural demand center in the Midwest.

Right-A-Way is requesting an exemption from the requirement to use ELDs when its drivers do not satisfy all the criteria for the short-haul exception to the RODS requirement . The exemption would enable the company’s short-haul drivers to use paper RODS rather than ELDs for more than 8 days in a 30-day period. The applicant requested the exemption be granted for 5 years. The exemption if granted, would cover approximately eight drivers and eight CMVs.

The applicant believes that its operation is similar to the operations provided by drivers of utility service vehicles. Right-A-Way wrote that FMCSA determined there

was no compelling safety argument to include drivers engaged in short-haul operations in the ELD requirements, and emphasized that Part 395 already provides some industry-specific exceptions for certain operations, including, oilfield operations, pipeline welding trucks, and utility service vehicles. The applicant contends that these exceptions and exemptions reflect the unique operating conditions of these industries, and assessment by Congress or FMCSA that the exceptions do not raise a compelling hazard.

To ensure an equivalent or greater level of safety absent the granted exemption, Right-A-Way offers daily safety training on all hazards on the job and driving conditions to its drivers and crews. A copy of the exemption application is included in the docket for this notice.¹

III. Public Comments

On April 28, 2020, FMCSA published notice of the application for exemption and asked for public comment (85 FR 23592). There were no comments submitted to the docket.

IV. FMCSA Decision

When FMCSA published the rule mandating ELDs it relied upon research indicating that the rule improves CMV safety and reduces the overall paperwork burden for both motor carriers and drivers by increasing the use of ELDs within the motor carrier industry, which will in turn, improve compliance with the HOS rules. The rule includes an exception allowing motor carriers up to 8 days in a 30-day period to operate under conditions subject to the ELD requirement, without being required to do so. The 8-day exception covers short-haul operations that occasionally exceed the distance or time

¹ You may view the notice and its supporting documentation online at <https://www.regulations.gov/docket?D=FMCSA-2019-0215>.

limits for the short-haul exception to the RODS requirements. Right-A-Way did not demonstrate how expanding the 8-day exception would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption.

Right-A-Way did not provide an alternative means of ensuring compliance with the HOS rules if drivers rely on paper RODS for more than eight times in a 30-day period. FMCSA does not accept mere maintenance of RODS more than eight days as an alternative to ELDs. There must be additional measures such as safety management oversight processes to achieve an equivalent level of safety and the applicant has not provided an acceptable alternative. Thus, Right-A-Way's request for an exemption is denied.

James W. Deck,
Deputy Administrator.